IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

ST.Rev.No.195 of 2004
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ORDER DATED 29.7.2003 IN TA.322/2002 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, ERNAKULAM
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REVISION PETITIONER/APPELLANT/APPELLANT/ASSESSEE:
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CHITHRA PRABHAN,
AIRCOOL ENTERPRISES,
EDAPPALLY

BY ADV. SRI. K.P.DANDAPANI (SR.) &
SRI. BALAGANGADHARAN

RESPONDENT/RESPONDENT/RESPONDENT/REVENUE:
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THE STATE OF KERALA,
REPRESENTED BY THE GOVERNMENT PLEADER,
HIGH COURT OF KERALA,
ERNAKULAM.

BY SPECIAL GOVERNMENT PLEADER MR.VINOD CHANDRAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 15/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**H.L.Dattu,C.J. & K.T.Sankaran,J.**

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S.T.Rev.No.195 of 2004

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Dated, this the 15th day of October, 2007

**ORDER**

**H.L.Dattu,C.J.**

The orders passed by the Kerala Sales Tax Appellate Tribunal, Additional Bench, Ernakulam in T.A.No.322 of 2002 dated 29.7.2003 is the subject matter of this revision petition.

(2) The assessment year in question is 1997-98. The matter arises under the provisions of the Kerala General Sales Tax Act, 1963 ("Act" for short).

(3) The assessee is a dealer registered under the provisions of the K.G.S.T.Act as well as Central Sales Tax Act.

(4) The petitioner is a dealer in consumer durable electronic goods, such as - Washing Machine, Air Conditioners, Stabilizers, etc.

(5) For the assessment year 1997-98, the petitioner had filed her annual returns declaring total and taxable turnover in a sum of Rs.91,16,855.00 and Rs.88,63,042.00 respectively. In the return so filed, she had revealed an amount of Rs.20,02,077.60 as servicing and repairing charges and consumables used for that purpose is a sum of Rs.3,16,122.

(6) The assessing authority while computing the tax liability of the petitioner, has disallowed 40% of the service and repair charges claimed and accordingly has quantified the tax liability. Aggrieved by the said order passed by the assessing authority, the assessee had preferred an appeal before the first appellate authority in S.T.A.No.841/01. The appellate authority by its order dated 12.11.2001 has modified the orders passed by the

assessing authority and in that has disallowed only 20% of the exemption claimed by the assessee towards repairs/service charges.

(7) Not being satisfied with the orders so passed by the first appellate authority, the petitioner was before the Tribunal in T.A.No.322 of 2002. The Tribunal by its order dated 29.7.2003 has rejected the assessee's appeal. The conclusion and reasoning of the Tribunal is as under:

> "On a consideration of the facts and records, we notice that the assessing authority disallowed a portion of the service charges received on the ground that when considering the value of raw materials purchased and used in executing the services and repairs, the service charges shown and claimed is unbelievably high and it has no favourable comparison with the figures relating to immediately previous year. During the previous year the service charges claimed was Rs.13,63,665.09 as against a purchase of raw materials worth Rs.8,24,784.19, while for the year in dispute the service charges claimed come to Rs.17,51,077.80 as against a purchase of raw materials amounting to Rs.7,11,982.97. It is particularly pointing out this aspect that the first appellate authority sustained the disallowance of exemption under service charges to 20% of the total claim. Before us also, the assessee has no convincing explanation for the vast difference and non-comparison in service charges and purchase of raw materials between the two years. So, the defect relied on by the lower authorities to disallow a small portion of exemption under service charges is still existing and we are of the view that it is a valid and sufficient reason to disallow 20% of the total claim. This disallowance is, therefore, confirmed".

(8) Aggrieved by the said order passed by the Tribunal, the assessee is before us in this Sales Tax Revision.

(9) The assessee has raised the following questions of law for our consideration and decision. They are as under:

> "(i) Whether the authorities were justified in disallowing a portion of the service charges on a comparison of the value of raw materials used in executing the services and repairs and the service charges claimed.

(ii) Whether the authorities were justified in the addition of Rs.12,145/- towards sale of raw materials purchased from unregistered dealers"

(10) The learned counsel appearing for the assessee would submit that the conclusion reached by the assessing authority as well as the Tribunal is wholly arbitrary and unreasonable. According to the learned counsel, in the nature of the business that is carried on by the assessee, the possibility of not using the consumables for the purpose of repairs/service is possible and, therefore, the Tribunal could not have compared the consumables consumed by the assessee for the previous year for computing the tax liability for the subsequent year. In support of that contention, the learned counsel has taken us through several judgments of this Court and various other Courts.

(11) The learned counsel appearing for the Revenue sought to justify the impugned orders passed by the assessing authority as well as by the Tribunal.

(12) The admitted facts are, that the assessee is a dealer in consumer durable electronic goods, as such - Washing Machines, Air Conditioners, Stabilizers, etc. In the annual return filed, the assessee had claimed deductions in a sum of Rs.17,51,077.80 towards repairs/service charges. The assessing authority has disallowed 40% of the claim made towards service/repair charges. The basis for not granting the total relief claimed by the assessee is that during the previous year the assessee, while claiming deduction towards repair/service charges, had shown the consumables used at a higher figure. Apart from that reasoning, there is no other reason by the assessing authority to disallow the 40% of the claim made

by the assessee.

(13) The first appellate authority in the appeal filed, has modified the orders passed by the assessing authority and in that has granted 20% more of the deductions claimed by the assessee and thereby the assessee was granted 80% of the deductions claimed from the taxable turnover towards repair/service charges. The Tribunal has confirmed the view expressed by the first appellate authority.

(14) In the instant case, as we have already noticed, the petitioner is a dealer in consumer durable electronic goods. She also undertakes the repair and service of the electronic goods sold by her. There is every possibility of the assessee not using consumables for the purpose of effecting repairs of the electrical goods sold by her. Merely because for the previous year the assessee had shown higher figure of consumables used by her, it does not mean that the same should be adopted for the subsequent assessment year also. It is now well known that each year's assessment is separate and the findings and conclusions reached in the previous assessment year need not be the criteria for passing any orders for the subsequent assessment year. If for any reason the assessing authority wanted to disallow the claim made by the assessee, he/she should have given some other reason and should not be based on the previous year's assessment while computing the tax liability of the assessee. In that view of the matter, we cannot accept the findings and conclusions reached by the Tribunal in disallowing the claim made by the assessee by rejecting the appeal filed. In that view of the matter, the revision filed by the assessee requires to be allowed. Therefore, the following:

**Order**

(i) The Sales Tax Revision is allowed.

(ii) A direction is issued to the assessing authority to grant total exemption of Rs.17,51,077.80 towards the repair/service charges and issue a fresh demand notice.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/DK.